

FILED

AUG 24 2007

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS OFFICE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

FREDERICK RICKY LAMBERT,
(N-30421)
Petitioner,
-vs-
LEE RYKER,
Respondent.

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Case No.

07-607-MJR

MOTION FOR STAY

NOW COMES the Petitioner, Frederick Ricky Lambert, Pro Se,
and Respectfully move this Honorable Court for a Stay pursuant to
28 U.S.C.A. §2254 et seq. In support, Petitioner states :

Frederick Ricky Lambert
Lawrence Correctional Center
RR 2 Box 31
Sumner, IL. 62466

A.

§2254 WRIT TIMELY FILED

Petitioners §2254 Writ for Federal Habeas Corpus Relief is timely filed and in support of this position, Petitioner present the following Procedural Facts.

Direct Appeal :

After his conviction and sentence, Petitioner filed a timely Notice of Appeal on **April 8, 1999**. On **August 3, 2001** the Illinois Appellate Court of the Second District rendered its decision Affirming in part, vacating in part and remanded. (Unpublished Order, App. # 2-99-0408) On **August 18, 2001** the State Prosecutor filed a Motion for Rehearing with the Illinois Appellate Court and said Motion was denied on **August 23, 2001**.

The Petitioner filed a timely Leave To Appeal to the Illinois Supreme Court on **September 26, 2001** and said Leave was denied on **October 5, 2001** (Case # 92458 at 763 N.E. 2d 774)

The State Prosecutor filed their timely Leave To Appeal to the Illinois Supreme Court on **September 27, 2001** and said Leave was denied in **January of 2003** (Case # 92474 at 787 N.E. 2d 177)

Post Conviction Petition :

While the State's Prosecutor Leave to Appeal was pending, the Petitioner filed a timely Post Conviction with the Circuit Court on **December 17, 2001** . The Circuit Court dismissed the Petition on **April 1, 2002**, Petitioner filed a Motion for Reconsideration on **April 29, 2002** , it was denied on **May 9, 2002** and Petitioner filed a timely appeal on **May 24, 2002**.

On **May 10, 2004** the Illinois Appellate Court, Second District rendered its decision affirming the dismissal of Petitioners Post Conviction Petition. (App. Case #2-02-0560) Petitioner filed a timely Leave to Appeal to the Illinois Supreme Court on **June 14, 2004** and said Leave was denied in **September of 2004** (Case # 98610 at 823 N.E. 2d 973).

Resentencing Procedural History :

While his Post Conviction was pending on Appeal, Petitioner went back before the Circuit Court on **May 1, 2003** to be resentence.* After his 100 year sentence were reduced to 60 years, Petitioner filed a timely motion for reconsideration on **May 28, 2003**. The Court denied the Motion on **July 3, 2003** and Petitioner timely appealed on **8 / 1 / 03** .

On **April 10, 2006** the Illinois Appellate Court, Second District rendered a Publish Decision affirming the appeal. (case # 2-03-0808 at 847 N.E. 2d 136). On **May 12, 2006** the Petitioner filed a Leave To Appeal to the Illinois Supreme Court and said Leave was denied on **September 27, 2006** (Case # 102726 at 857 N.E.2d 679)

Regarding the time-toll issue Petitioner contends that the facts illustrated above clearly indicate that his Petition for Writ of Habease Corpus pursuant to §2254 is timely filed as it relate to his request for a Stay as outlined on the following page.

* Petitioner was remanded back to the Circuit Court to be resentence per the Appellate Court August 3, 2001 Order after the State Prosecutors Leave to Appeal to the Illinois Supreme Court was denied in January of 2003.

B.

Request For Stay

Federal District Court has discretion to Stay a mixed Habeas Petition containing exhausted and unexhausted claims to allow the Petitioner to present his unexhausted claims to the State Court in the first instance, and then to return to Federal Court for review of his perfected Petition. 28 U.S.C.A. §2254 (b) (1) (a) Rhines v. Weber, 125 S.Ct. 1528, 544 U.S. 269 (2005).

In the instant case eight (8) of the grounds presented has been fully exhausted while the remaining claims is currently pending before the trial Court with Court appointed counsel. (See Exhibit 1 and 2 attached).

As this Court is fully aware, an Illinois Post Conviction Petition that does not have merits is, as a matter of procedure , dismissed at the first stage. It's only when the trial court find that the Post Conviction has merits would it be allowed to go to the second stage with Court appointed counsel. 725 Illinois Compile Statutes, section 5/122-4 (See People v. Rivera, 198 Ill.2d 364 (Sup. Ct. 2001).

Petitioner consolidated his State Post Conviction along with a Petition for Relief From Judgment pursuant to 735 Illinois Compile Statutes, section 2-1401. Petitioner submits to this Court that both of the consolidated Collateral Petitions is pursued in good-faith with the legal assistance of Law Clerks Craig and Boggan.

In U.S. ex rel. Santiago v. Hinsley, 297 F.Supp.2d 1063 (N. D. Ill. 2003), the Court held that a Stay of Federal Habeas proceeding on mixed petition was appropriate pending State Court action on contemporaneously filed State Post Conviction Petition on unexhausted claims.

Even where Stay and abeyance is appropriate in a Habeas Proceeding involving a mixed petition of exhausted and unexhausted claims, the district court's discretion in structuring the stay is limited by the timeliness concerns reflected in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA); thus, a mixed petition should not be stayed indefinitely, but rather, District Courts should place reasonable time limits on a petitioner's trip to State Court and back. Rhines v. Weber, 125 S.Ct. 1528, 544 U.S. 269 (2005).

If Petitioner does not receive a new trial in this matter in the State Court on his pending collateral Petition's. He seek a Stay to return to this Court on his §2254 Writ within 21 days after exahusting his claims in the State Court's.

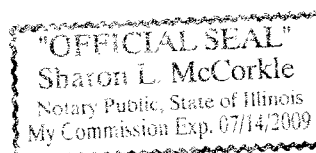
WHEREFORE, Frederick Ricky Lambert, Petitioner, Pro Se, With all due Respect move this Honorable Court for a Stay on his pending §2254 Petition.

Prayer For Relief :

1. An Order of Stay with 21 days to return to this Court if necessary.

Respectfully Submitted : Frederick Ricky Lambert
(Petitioner)

Subscribed and sworn to before me this 21st day of August 20 07
Notary : Sharon L. McCorkle



**OFFICE OF THE PUBLIC DEFENDER
COUNTY OF WINNEBAGO**

SUITE 340 WINNEBAGO COUNTY COURTHOUSE
400 WEST STATE STREET
ROCKFORD, ILLINOIS 61101
(815)319-4900 Fax (815) 319-4901

KAREN SORENSEN
PUBLIC DEFENDER

July 30, 2007

DAVID DOLL
FIRST DEPUTY
PUBLIC DEFENDER

Frederick R. Lambert N30421
Lawrence Correctional Center
Rural Route 2
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ERIN HANNIGAN
TAMIKA WALKER
CHRISTOPHER HUMPHREY
SHAUNA GUSTAFSON
JOHN COLLINS
JOSHUA SMITH
ELDER GRANGER III
RYAN SWIFT
TERRI BUNDY

RE: 94CF148

Dear Mr. Lambert:

I have been appointed to represent you on the post conviction petition filed in 94CF148. The case has been assigned to Judge McGraw, and the next court date is set for September 6, 2007 at 9:00am. First, I need to inform you that my supervisor, Karen Sorensen, represented a witness that testified against you at trial. This does pose a potential conflict of interest. You need to let me know, in writing, if you are willing to waive this conflict, or if you would like counsel outside of the Public Defender's Office to represent you. If you do not want to waive this conflict, then I shall prepare a Motion to Withdraw, and writ you back for the September court date so that new counsel can be appointed to represent you. Otherwise, I will continue working on your case.

I have received the Post Conviction Petition that you filed. I am in the process of reviewing the Petition, and am attempting to locate a transcript of the trial court proceedings. In the meantime, please contact me about the conflict issue.

LOUIS PALMERI
CHIEF INVESTIGATOR

INVESTIGATORS
ZALLY VARONA- HAHN
HEATHER WILLIAMS
ROBERT FAULKNER

Sincerely,



Chrissie Garza
Assistant Public Defender

Exhibit - 1

CRIMINAL FELONY

Date: 7/25/2007

Time: 8/42/19

Page: 1

1994 CF 000148 Judge: PETERSON K CRAIG From 1/01/2007 To 99/99/999

Case Names _____ Attorney Names _____

User: HOWARDT

VS

Wsid: CC1001G0

LAMBERT FREDERICK R

PD CHRISSIE GARZA

All Entries For

+

Date

3/29/2007 PETITION FOR POST CONVICTION RELIEF Filed Defendant LAMBERT FREDERICK
STATUS ON POST CONVICTION Apr 05,2007 01:30PM Rm467 Judge MCGRAW
Judge:PETERSON K CRAIG Clerk:MJH M

3/29/2007 PROOF/CERTIFICATE OF SERVICE Filed Defendant LAMBERT FREDERICK R
Judge:PETERSON K CRAIG Clerk:MJH M

3/29/2007 APPLICATION TO SUR OR DEFEND AS A POOR PERSON Filed
Defendant LAMBERT FREDERICK R
Judge:PETERSON K CRAIG Clerk:MJH M

3/29/2007 MOTION FOR APPOINTMENT OF COUNSEL Filed Defendant LAMBERT FREDERICK R
Judge:PETERSON K CRAIG Clerk:MJH M

4/05/2007 CONTINUE - ON DEFENDANT'S MOTION-NOTICE GIVEN
(No file in Court/Defendant's Papers only) - People of the State
of Illinois present by Assistant State's Attorney, STEVEN J.
BIAGI. Defendant not present, in DOC. Cause comes before the Court
on Defendant's Prose Petition for Post Convictions. Judge would
like file. On Defendant's motion matter continued for status.
STATUS ON POST CONVICTION Jun 06,2007 09:00AM Rm467 Judge MCGRAW
Judge:MCGRAW JOSEPH G Rep:MCNEELEY ANN M Clerk:JJF M

6/06/2007 Judge COLLINS ROSEMARY M
The people present by Prosecuting Attorney STEVEN J. BIAGI.
Defendant in DOC. Judge McGraw held to Jury trial. Cause
continued for status regarding Post Conviction Petition.
STATUS ON POST CONVICTION Jun 21,2007 09:00AM Rm467 Judge MCGRAW
Judge:MCGRAW JOSEPH G Rep:BRASSFIELD SANDRA Clerk:MJJ M

6/21/2007 CONTINUANCE-NOTICE GIVEN Judge KENNEDY J. TODD
People of the State of Illinois present by Assistant State's
Attorney, STEVEN J. BIAGI. Deft not present (DOC). ASA Biagi
present but not a party to the case yet. Case comes on for status
on deft's Petition For Post Conviction Relief. Judge McGraw is
held to trial in Boone County. Matter continued for Status on
deft's petition.
STATUS ON POST CONVICTION Jul 05,2007 09:00AM RmA Judge MCGRAW
Judge:MCGRAW JOSEPH G Rep:PASKY JOANN E Clerk:WF M

7/05/2007 CONTINUANCE - PUBLIC DEFENDER APPOINTED-NOTICE GIVEN
People of the State of Illinois present by Assistant State's
Attorney, STEVEN J. BIAGI. Defendant not present, Deft is in DOC.
Public Defender appointed. PD Winzeler appears. On motion of the
defendant case is continued for status.
STATUS ON POST CONVICTION Sep 06,2007 09:00AM RmA Judge MCGRAW
Judge:MCGRAW JOSEPH G Rep:GIERWIATOSKI JANET S Clerk:SAN M

7/05/2007 PUBLIC DEFENDER APPOINTED-NOTICE SENT
Document NOTPD2 Was Printed
Judge:MCGRAW JOSEPH G Rep:GIERWIATOSKI JANET S Clerk:SAN M

Exhibit-2